BOARD OF EQUALIZATION

STATE OF CALIFORNIA

In the Matter of the Appeal of:	)	**FORMAL OPINION**
	)	
	)	**2006-SBE-003**
	)	
DELUXE CORPORATION	)	Case No. 297128
	)	

Representing the Parties:

For Appellant: Marty Dakessian, Attorney
Brett E. Scribner

For Respondent: Ann H. Hodges, Tax Counsel III

This appeal is made pursuant to section 19324, subdivision (a), of the Revenue and Taxation Code (R&TC) from the action of respondent Franchise Tax Board (FTB) in denying Deluxe Corporation's claims for refunds for the following years and amounts:

Years Ended	Claims for Refund
12-31-97	$104,896[1]
12-31-98	$238,471[2]
12-31-99	$254,320
12-31-00	$206,177
12-31-01	$175,877

[1] This amount and those listed for years ended December 31, 2000 and 2001, are amounts of the enterprise zone hiring credit appellant claimed on its amended returns that respondent disallowed.

[2] This amount and that listed for year ended December 31, 1999, are enterprise zone hiring credit carryovers that respondent disallowed.

The question presented is whether FTB may independently review hiring credit vouchers and verify whether an employee is a qualified employee for purposes of the Enterprise Zone hiring credit. As set forth below, the answer to this question is that FTB does have the authority to review the validity of the vouchers issued by enterprise zones certifying that an employee is qualified for purposes of the Enterprise Zone hiring credit.

Procedural History

The oral hearing in this appeal was held on January 31, 2006. During that hearing the Board voted on the issue which is the subject of this opinion, i.e., whether FTB has the authority to review the validity of hiring credit vouchers, and determined that FTB does have that authority. In addition, the Board ordered that appellant submit within thirty days additional documentation supporting that the remaining disputed vouchers (see footnote 5) are valid. FTB was given thirty days thereafter to respond, and the Appeals Division thirty days thereafter to provide its recommendation.

The Enterprise Zone Program

The Legislature enacted the Enterprise Zone Act (EZA) to stimulate business and industrial growth in economically depressed areas of the state by relaxing regulatory controls that impede private investment. (Gov. Code, § 7071.) The EZA thus contains regulatory, tax, and other incentives to attract investment into those areas. The Legislature initially charged the former Technology, Trade and Commerce Agency (TTCA) with the administration of the Enterprise Zone program. As of January 1, 2004, however, the Department of Housing and Community Development (HCD) assumed responsibility for administration of the program. (*Id.*, § 7072.) Any city, county, or city and county with an eligible area within its jurisdiction may apply for designation as an enterprise zone. (*Id.*, § 7073, subd. (a).) In designating enterprise zones, HCD must select the application proposing the most effective, innovative, and comprehensive regulatory, tax, program, and other incentives designed to attract private sector investment into the proposed zone. (*Id.*, § 7073, subd. (b)(1).)

To oversee the operation of the EZA, the Legislature charged TTCA/HCD with auditing the enterprise zones at any time during the period of the enterprise zone designation, or at least once every five years. (Gov. Code, § 7076.1, subd. (a).) In the audit, HCD evaluates the zone's success in

meeting the goals, objectives, and commitments set forth in the original application and the HCD's memorandum of understanding ("MOU") with the zone. (*Ibid.*) The audit focuses on the zone's use of the marketing plan, local incentives, financing programs, job development, and program management as described in the application and MOU. (*Id.*, § 7076.1, subd. (b).) The audit also evaluates the vouchering plans, zone staff levels, zone budget, and elements unique to each enterprise zone application. (*Ibid.*)

Upon completion of the audit, HCD issues an audit determination of superior, pass, or fail. (Gov. Code, § 7076.1, subd. (b).) If HCD determines that an enterprise zone is failing to meet its goals, the enterprise zone must enter into an MOU with HCD that specifies those items that the zone is required to remedy or improve. (*Id.*, § 7076.1, subd. (c)(3)(B).) The EZA sets forth specific procedures allowing the enterprise zone to remedy its failings before HCD proceeds with dedesignating the zone. (*Id.*, §§ 7076.1, subd. (c)(3) & 7076.2.) HCD has also been charged with developing and implementing regulations regarding the administration of enterprise zones and, as relevant here, the content of hiring credit vouchers and the documentation required in order to issue a voucher. (*Id.*, § 7086.)

The "vouchering plan" concerns the enterprise zone hiring credit, which provides a tax credit to employers operating in an enterprise zone who pay wages to qualified employees. (Rev. & Tax. Code, §§ 17053.74 & 23622.7.[3]) One of the requirements of the credit requires that the employer obtain a certificate (commonly referred to as a "voucher") from one of the statutorily approved vouchering agencies certifying that the employee is a qualified employee for purposes of the hiring credit. (Rev. & Tax. Code, § 23622.7, subd. (c)(1).)

[3] R&TC section 17053.74 concerns the enterprise zone hiring credit with respect to personal income tax, while R&TC section 23622.7 concerns the enterprise zone hiring credit with respect to corporate tax. As appellant herein is a corporation, we will refer only to R&TC section 23622.7.

Factual Background

The vouchers questioned by respondent in this appeal issued from the Oakland Enterprise Zone (EZ) vouchering agency in June and July of 2003.[4] TTCA apparently received information suggesting that the Oakland EZ vouchering agent improperly issued vouchers. It appears from the record that TTCA limited its audit to the Oakland EZ, and we are not aware that TTCA targeted any other zones for audit. TTCA requested assistance from respondent in conducting the audit of the Oakland EZ's vouchering practices. During the period September 8, 2003, through September 11, 2003, respondent reviewed a random sample of records relating to vouchers issued by the Oakland EZ from January 1, 2001, through September 1, 2003.

The audit concluded that the Oakland EZ must improve its capacity and standards for verifying the validity of documentation submitted in the application for the issuance of hiring credit vouchers. The TTCA audit specifically concluded that the Oakland EZ vouchering agent maintained inadequate records that were insufficiently documented or missing, failed to independently verify supporting source documents, and erroneously issued vouchers to ineligible employees. As a result of its audit, TTCA notified the Oakland EZ that it would receive a failing rating if the zone did not institute changes to its vouchering process and required the Oakland EZ to enter into an MOU with HCD (as the successor to TTCA) to address remedies and needed improvements. One of the resulting requirements of the MOU was that the Oakland EZ was prohibited from issuing vouchers for businesses within other EZ's. The MOU further charged the Oakland EZ with the sole responsibility for the independent, systematic, consistent, and recorded verification that the documentation submitted in applications for the hiring credit would satisfy all tests of a qualified employee and that the documentation would be sufficient to substantiate applicant claims. Failure to meet the requirements of the MOU meant that the Oakland EZ could lose its enterprise zone designation.

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[4] Appellant operated in (and its employees worked in) the Antelope Valley EZ. The Oakland EZ issued "cross-jurisdictional" vouchers to appellant; this practice is permitted by HCD. The Oakland EZ was, however, subsequently prohibited (pursuant to its MOU with HCD) from issuing such cross-jurisdictional vouchers as a result of its EZ audit, as discussed herein. During appellant's audit, the FTB advised appellant it could obtain replacement vouchers under other qualifying categories and FTB would consider such vouchers. Appellant later successfully obtained replacement vouchers from the Antelope Valley EZ for some of its disallowed vouchers, which respondent accepted.

The Oakland EZ vouchering agent issued 142 of appellant's 348 vouchers in June or July of 2003, several months prior to TTCA's audit. Respondent's auditor immediately accepted 47 of the vouchers issued by the Oakland EZ because there was no indication that Oakland improperly issued these vouchers. The auditor selected the remaining 95 vouchers for further review.[5] Respondent sent two Information/Document Requests (IDR's) to appellant requesting additional information. In its first IDR, respondent requested documentation supporting that the employees in question were actually enrolled in the Job Training Partnership Act (JTPA), a federal program designed to assist disadvantaged individuals in receiving job training and placement.[6] Respondent indicated that appellant could seek replacement vouchers under another eligibility criterion if it was unable to obtain the requested documentation.

Respondent requested information in its second IDR on appellant's "dislocated worker" vouchers.[7] Respondent again indicated that appellant could seek replacement vouchers under another eligibility criterion if it was unable to obtain the requested documentation. Appellant provided 12 new vouchers for 12 employees under the "dislocated worker" eligibility category, which respondent accepted. Appellant also responded in May or June of 2004 that the supporting documentation for the remaining disputed vouchers was unavailable.

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[5] Both appellant and respondent made concessions regarding the disputed vouchers prior to the oral hearing in this appeal, reducing the number of disputed vouchers to 51 vouchers. Following appellant's post-hearing submissions respondent accepted an additional voucher as substantiated (R2), and appellant conceded seven vouchers (C4, G3, H1, T3, V1, W1, and W2), so that a total of 43 vouchers were disputed.

[6] Respondent requested the caseworker letter typically available for a person enrolled in the JTPA confirming that enrollment, for each of these vouchers. We note that enrollment is not required in order for an individual to be a qualified employee; R&TC section 23622.7, subdivision (b)(4)(A)(iv)(I), requires only that an individual be eligible for services under the JTPA.

[7] Respondent listed potential supporting documents as: Notice of Plant Closure or Layoff Notice/Worker Adjustment and Retraining Notification Act (WARN) notice, statement from employer, copy of printed media article describing the closure and proof of employment at the company, bankruptcy notice, evidence that the employee faced limited opportunity for employment or reemployment in the same or similar occupation in the area in which the employee resides, or an internet search on the plant closure. This list of potential supporting documents is derived from the Department of Labor's Technical Assistance Guide (TAG). In 1992, a comprehensive package of reform amendments was made to the JTPA. These reform amendments included the requirement that the Department of Labor (DOL) provide guidance to states and service delivery areas administering the JTPA on the documentation required to demonstrate eligibility for services under the JTPA's economically disadvantaged Adult and Youth programs; the TAG is the result of this requirement. (1992 U.S. Code Cong. & Admin. News, at p. 5.)

Appellant claimed enterprise zone hiring credits totaling $2,926,315 for the five income years at issue herein. Appellant conceded during protest that its credits totaled no more than $2,790,821. Respondent ultimately disallowed $640,495 of that total. For the credits that it initially allowed at audit, respondent verified the calculation method and did no further review of the vouchers. For those vouchers which respondent questioned, respondent requested supporting documentation establishing that the vouchers were valid. Respondent disallowed the hiring credits claimed for the questionable vouchers for which appellant was unable to produce substantiating documentation. As a result of its audit, respondent allowed appellant's claims for refunds in full for income years ended December 31, 1998, and December 31, 1999, and disallowed a portion of the hiring credits appellant claimed for income years ended December 31, 1997, December 31, 2000, and December 31, 2001.

Issue: FTB Authority to Review the Validity of Vouchers

Contentions

Appellant contends that the authority to issue vouchers and make eligibility determinations for employees rests with HCD and the enterprise zone vouchering authority pursuant to R&TC section 23622.7, subdivision (c)(1). That section requires the taxpayer claiming the hiring credit to obtain a certification (commonly referred to as a "voucher") from one of the four specified types of authorized local agencies verifying that an employee is a qualified employee and meets the eligibility requirements of R&TC section 23622.7, subdivision (b)(4)(A)(iv). R&TC section 23622.7, subdivision (c)(1), further requires the taxpayer to provide the certification to respondent upon request. Appellant contends that the language in this subdivision provides that the voucher issued by the enterprise zone vouchering agent serves as sufficient proof that a qualified employee meets the requirements of the statute. In addition, appellant contends that the Legislature did not intend to confer vouchering authority on respondent as exhibited by the fact that the statute specifically confers the vouchering authority on the specified local agencies and is silent with respect to respondent's role in the vouchering process (other than to require that the taxpayer provide the certification to respondent upon request). Appellant thus contends that respondent's only role is to accept vouchers without question and to perform and/or check the calculations for the credit. Accordingly, appellant contends that its claimed hiring credits

should be allowed in full because it obtained and presented the applicable certifications to respondent upon request, therefore meeting the requirements of R&TC section 23622.7.

Respondent contends that its review of the vouchers is mandated by its statutory obligation to administer and enforce the R&TC. Specifically, respondent points to: R&TC section 19032, which provides that after a return is filed respondent shall examine the return and determine the correct amount of tax; R&TC section 19501, which provides that respondent shall administer and enforce Part 10 (Personal Income Tax), Part 10.7 (Taxpayers' Bill of Rights), and Part 11 (Franchise and Income Tax); and, R&TC section 19504, which provides that respondent has the power to require by demand that any entity provide information relevant to the purpose of administering its duties (including ascertaining the correctness of any return).

Respondent also contends that nothing in the EZA's legislative history indicates the Legislature intended to limit respondent's authority to independently review vouchers or to limit respondent's statutory obligation to enforce R&TC section 23622.7 by requiring it to accept vouchers under any circumstances. In fact, respondent notes that the 1994 bill amending R&TC section 23622.7 added the voucher requirement to address potential abuses of the hiring credit. Further, respondent cites the 2004 amendment to Government Code section 7076 as evidence that the Legislature intended to authorize respondent to review vouchers. The 2004 amendment provides for HCD to refund the voucher fee collected by the vouchering agent for each voucher issued in the event that respondent does not accept the voucher. Respondent contends that Government Code section 7076 thus acknowledges that respondent is not required to accept vouchers at face value and may determine that a voucher is invalid.

Law and Analysis

R&TC section 23622.7

R&TC section 23622.7 provides for a credit against the "tax" (as defined by R&TC section 23036) to a taxpayer who employs a qualified employee in an enterprise zone during the taxable year. The credit is calculated as a percentage of qualified wages paid during the first through fifth years of employment in progressively decreasing amounts. A "qualified employee" is one who meets the following requirements:

1. At least 90 percent of the employee's services for the taxpayer during the taxable year are directly related to the conduct of the taxpayer's trade or business located in an enterprise zone;
2. The employee performs at least 50 percent of his or her services for the taxpayer during the taxable year in an enterprise zone; and,
3. The employee is hired by the taxpayer after the date of original designation of the area in which services were performed as an enterprise zone.

Further, a "qualified employee" is an employee who, in addition to the requirements set forth above, also meets the requirements of any one of the 11 categories set forth in R&TC section 23622.7, subdivision (b)(4)(A)(iv). For example, the first three such categories provide that an employee is a qualified employee if he or she:

1. Immediately preceding his or her commencement of employment with the taxpayer was a person eligible for services under the federal Job Training Partnership Act (JTPA)[8] (29 U.S.C. § 1501, et seq.), or its successor,[9] who is receiving or is eligible to receive, subsidized employment, training, or services funded by the federal JTPA; or
2. Immediately preceding his or her commencement of employment with the taxpayer was a person eligible to be a voluntary or mandatory registrant under the Greater Avenues for Independence Act of 1985 (GAIN) or its successor;[10] or,
3. Immediately preceding his or her commencement of employment with the taxpayer was an economically disadvantaged individual 14 years of age or older.

Of particular relevance in this case, R&TC section 23622.7, subdivision (c)(1), requires that a taxpayer shall both: (1) Obtain a certification from the appropriate vouchering agent that provides that a qualified employee meets the eligibility requirements of subdivision (b)(4)(A)(iv); and, (2) retain

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[8] The JTPA defines various categories of persons eligible to receive job-training services. As is applicable to this case, some of those categories are: (1) Dislocated workers who are long term unemployed or have been laid off or terminated; (2) displaced homemakers; (3) older workers (55+); and (4) certain veterans.

[9] The JTPA has been replaced by the Workforce Investment Act of 1998, effective July 1, 2000. (29 U.S.C. §§ 2801, et seq.)

[10] GAIN has been superseded by CalWORKS. (See Welf. & Inst. Code, § 11320.)

a copy of the certification and provide it upon request to the FTB. This subdivision also provides that the voucher shall be obtained from the Employment Development Department (EDD), as permitted by federal law, or the local county or city JTPA administrative entity, or the local county GAIN office or social services agency, as appropriate.[11]

Our review of R&TC section 23622.7 indicates that the section does not address respondent's role in reviewing the validity of vouchers; the section neither requires nor prohibits respondent's audit of vouchers. However, we note that the Legislature subsequently referred to respondent's authority to review and reject vouchers in its amendment of Government Code section 7076. Government Code section 7076 requires HCD to provide technical assistance to the enterprise zones with respect to specific enterprise zone activities. This section was amended by legislation (Stats. 2004, ch. 225, § 14), effective August 16, 2004, to also provide HCD with the authority to assess a fee of not more than $10 against each enterprise zone for each application accepted for issuance of a vouchering certificate. (Gov. Code, §7076, subd. (c).) In particular, this legislation provides that any such fee assessed and collected shall be refundable if the voucher issued by the local government is not accepted by the Franchise Tax Board. (*Id.*, §7076, subd. (d).) This code section clearly contemplates that FTB has the authority to disallow vouchers; however, it was not in effect at the time the vouchers in question here were issued.

Respondent also has the general authority to review returns and ascertain the correct tax pursuant to the provisions of the R&TC that require respondent to administer and enforce the R&TC. In particular, section 19032 provides that, as soon as practicable after a return is filed, respondent shall examine it and determine the correct amount of tax; section 19501 provides that respondent shall administer and enforce Part 10 (Personal Income Tax), Part 10.7 (Taxpayer's Bill of Rights), and Part 11 (Franchise and Income Tax); and, section 19504 authorizes respondent to require by demand that any entity provide information relevant to the purpose of administering respondent's duties (including ascertaining the correctness of any return).

[11] The EDD, with its experience administering the JTPA and vouchering for purposes of the hiring credit, ceased operating as a vouchering agency as of April 9, 1997, pursuant to Electronic Field Office Directive 97-22. That directive instructed EDD field offices to no longer perform eligibility determinations, request documentation, or sign a voucher. Accordingly, vouchering duties thereafter fell to the remaining statutorily authorized vouchering agencies.

Finally, R&TC section 19801 provides that, in determining any issue of law or fact under Part 10 or Part 11, neither the FTB nor any officer or agency having any administrative duties under Part 10.2 (Administration of Franchise and Income Tax Laws and Regulations), nor any court, is bound by the determination of any other officer or administrative agency of the state. We applied the substantively identical predecessor to R&TC section 19801 (section 22.1 of the Bank and Corporation Franchise Tax Act) in *Appeal of Ida Arvida Rogers* (50-SBE-016), decided August 10, 1950, and concluded that we were not bound by the Secretary of State's determination of the filing date of a certificate of dissolution for purposes of determining the correct amount of tax.

Based on the foregoing, we conclude that respondent does have the authority to review and disallow hiring credit vouchers.

O R D E R

Pursuant to the views expressed in this opinion, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Franchise Tax Board has the authority to review the validity of hiring credit vouchers pursuant to Revenue and Taxation Code section 23622.7. The issue of whether appellant has substantiated that the employees that are the subject of the disputed vouchers are qualified employees for purposes of the hiring credit is addressed separately from this opinion.

Done at Sacramento, California, this 12th day of December, 2006, by the State Board of Equalization, with Board Members Mr. Chiang, Ms. Yee*, Mr. Leonard, Mr. Parrish and Ms. Mandel present.

John Chiang, Chair

Betty T. Yee*, Member

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_____, Member

Marcy Jo Mandel**, Member

*Acting Board Member, 1st District

**For Steve Westly per Government Code section 7.9.